

IN THE MATTER OF : BEFORE THE
MICHELLE LYNAS : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. 08-024V

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DECISION AND ORDER

On May 27, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Michelle Lynas, for a variance to reduce the 30-foot rear setback to approximately 18 feet for a two-story addition to an existing single-family detached dwelling located in an R-20 (Residential: Single Family) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Michelle Lynas testified in support of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The 8,000-square foot subject property is located on the west side of Hunt Avenue about 125 feet southeast of Old Columbia Pike. It lies in the 6th Election District and is identified as Tax Map 42, Grid 10, Parcel 210, and is also known as 4010 Hunt Avenue (the "Property").

2. The rectangular Property is improved by an approximately 32' wide by 25' deep, two-story, single-family detached dwelling situated in the Property's mid-section and about 60 feet from the front lot line. The frame dwelling has a covered front porch that runs almost the entire length of the front façade. The Petitioner recently razed a one-story, 12'-deep, enclosed back porch. A driveway paralleling the southern lot line leads to a one-car detached garage situated in the lot's southeast corner. Two large trees dominate the front yard.

3. Adjacent properties are also zoned R-20 and are improved with single-family dwellings. Like the subject dwelling, the adjoining residences on Hunt Avenue have deep front yards and shallow rear yards. The residences to the rear of the Property' rear lot line front on and are sited much closer to Overlook Drive. Many area residences have newer rear additions, enclosed porches, or large open decks.

4. The Petitioner is requesting an approximately 12-foot variance from the 30-foot rear setback to construct a two-story addition to the dwelling's rear. As constructed, the new rear façade would lie some 18 feet from the rear property line.

5. Michelle Lynas testified that the addition would extend no farther into the rear setback than the old porch. She also stated the house was built in 1927 and that it is listed on the Howard County Inventory of Historic Places (the Boone House) and that she wanted to retain as much of its historic character as possible.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

- (1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other

existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A "practical difficulty" is shown when the strict letter of the zoning regulation would "unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily

burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

While existing structures may not be considered "unique" features of a property, the rear porch was partially situated within the required 30-foot setback area. As such, the dwelling is a noncomplying structure and therefore constitutes a unique physical condition of the Property. Consequently, I find that the location of the dwelling's rear porch is a unique physical condition that causes the Petitioner practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The two-story addition will be used for a permitted purpose and will not change the nature or intensity of use. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, where rear additions are common, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the location of the noncomplying structure on the lot and was not created by the Petitioners, in accordance with Section 130.B.2.a(3).

4. The proposed addition is a reasonable size. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this 19th June 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Michelle Lynas for a variance to reduce the 30-foot rear setback to approximately 18 feet for a two-story addition to an existing noncomplying single family detached dwelling located in an R-20 (Residential: Single Family) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations") is **GRANTED.**

Provided, however, that:

1. The variance shall apply only to the uses and structures as described in the petition submitted and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed:

6/20/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.